

ATTACHMENT B
GOVERNMENT MERCHANT PROCESSING AGREEMENT

This Merchant Processing Agreement (“Agreement”) is entered into as of the date set forth below, by and among the Commonwealth of Virginia (“Merchant” or “you”), NOVA Information Systems, Inc., a Georgia corporation (“NOVA”) and First Union National Bank, Charlotte, N.C., a national banking association (“Member”).

Recitals

- A. Merchant desires to accept credit cards validly issued by members of Visa U.S.A., Inc. (“Visa”) and MasterCard International, Incorporated (“MasterCard”) (“Card” or “Cards”).
- B. NOVA and Member desire to provide credit card processing services to Merchant.
- C. Therefore, Merchant, NOVA and Member agree as follows:

Terms and Conditions

1. Honoring Cards.

A. Without Discrimination. You will honor, without discrimination, any Card properly tendered by a Cardholder. “Cardholder” means a person possessing a Card and purporting to be the person in whose name the Card is issued.

B. Cardholder Identification. You will identify the Cardholder and check the expiration date and signature on each Card. You will not honor any Card if:

- i. the Card has expired,
- ii. the signature on the sales draft does not correspond with the signature on the Card, or
- iii. the account number embossed on the Card does not match the account number on the Card’s magnetic stripe (as printed in electronic form) or the account number is listed on a current Electronic Warning Bulletin file.

Unless permitted under the Laws and Rules (defined below), you will not require a Cardholder to provide personal information, such as a home or business telephone number, a home or business address, or a driver’s license number, as a condition for honoring a Card.

C. Card Recovery. You will use reasonable efforts to recover any Card:

- i. on Visa Cards, if the printed four digits above the embossed account number do not match the first four digits of the embossed account number,
- ii. if you are advised by Member (or its designee), the issuer of the Card or the designated voice authorization center to retain it,
- iii. if you have reasonable grounds to believe the Card is counterfeit, fraudulent or stolen, or not authorized by the Cardholder, or

- iv. for MasterCard Cards, the embossed account number, indent printed account number and/or encoded account number do not agree, or the Card does not have a MasterCard hologram on the lower right corner of the Card face.

D. Surcharges. You will not add any amount to the posted price of goods or services you offer as a condition of paying with a Card, consistent with the Laws and the Rules. This paragraph does not prohibit you from offering a discount to induce a person to pay by cash, check or similar means rather than by using a Card.

E. Return Policy. You will properly disclose to the Cardholder, at the time of the Card transaction and in accordance with the Rules, any limitation you have on accepting returned merchandise.

F. No Claim Against Cardholder. You will not have any claim against, or right to receive payment from, a Cardholder or any other customer in any Card transaction for the amount of the Transaction unless Member or NOVA refuses to accept the Sales Draft (as defined in Section 3) or revokes its prior acceptance of the Sales Draft (after receipt of a chargeback or otherwise). You will not accept any payments from a Cardholder for previous Card charges for merchandise or services included in a Sales Draft, and if you receive such payments, you promptly will remit them to Member.

G. Disputes With Cardholders. All disputes between you and any Cardholder relating to any transaction paid with a Card will be settled between you and the Cardholder. Neither NOVA nor Member bears any responsibility for the underlying transactions between you and any Cardholder except for NOVA's or Member's acts of negligence or willful misconduct.

H. Employee Actions. You are responsible for your employees' actions while in your employ.

2. Authorization.

A. Required on all Transactions. You will obtain a prior authorization via electronic terminal or similar device before completing any transaction. You will follow any instructions received during such authorization process. Upon receipt of authorization, you may consummate only the transaction authorized and must note on the Sales Draft the authorization number. Where authorization is obtained, you will be deemed to warrant the true identity of the customer as the Cardholder.

B. Effect. Authorizations are not a guarantee of acceptance or payment of the Card transaction and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card.

C. Unreadable Magnetic Stripes. If you authorize and present Card transactions electronically and your terminal is unable to read the magnetic stripe on the Card, you will obtain an imprint of the Card and the Cardholder's signature on the imprinted draft before presenting the Sales Draft to Member and NOVA for processing.

3. Presentment of Sales Drafts.

A. Forms. You will use a sales draft or other form approved by Member and NOVA (“Sales Draft”) to document each Card transaction. Each Sales Draft will be legibly imprinted with:

- i. Merchant’s name and account number,
- ii. the information embossed on the Card presented by the Cardholder (either electronically or manually),
- iii. the date of the transaction,
- iv. a brief description of the goods or services involved,
- v. the transaction authorization number,
- vi. the total amount of the sale (including any applicable taxes) or credit transaction, and
- vii. adjacent to the signature line, a notation that all sales are final, if applicable.

B. Signatures. Sales Drafts must be signed by the Cardholder. The requirement for the Cardholder’s signature on the Sales Draft will only be waived if the Card transaction is a valid mail/telephone order or electronic commerce Card transaction which fully complies with the requirements set forth in this Agreement.

C. Reproduction of Information. If the following information embossed on the Card and the Merchant’s name is not legibly imprinted on the Sales Draft, you will legibly reproduce:

- i. the Cardholder’s name,
- ii. account number,
- iii. expiration date, and
- iv. the Merchant’s name and place of business.

Additionally, for MasterCard transactions, you will legibly reproduce the name of the bank that issued the Card as it appears on the face of the Card.

D. Delivery and Retention of Sales Drafts. You will deliver a complete copy of the Sales Draft or credit voucher to the Cardholder at the time of the transaction. You will retain the “merchant copy” of the Sales Draft or credit memorandum for at least 3 years following the date of completion of the Card transaction.

E. Electronic Transmission. If you utilize electronic authorization and/or data capture services, you will enter the data related to a sales or credit transaction into a computer terminal or magnetic stripe reading terminal no later than the close of business on the date the transaction is completed. If you provide your own electronic terminal or similar device, such terminals must meet NOVA’s requirements for processing transactions. Information regarding a sales or credit transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by you to NOVA or its agent in the form NOVA from time to time specifies, or as required under the Laws or Rules. If Member or NOVA requests a copy of a Sales Draft, credit voucher or other transaction evidence, you will provide it within the time frame specified in the request.

4. Deposit of Sales Drafts.

A. Funds.

- i. Deposits. You agree that this Agreement is a contract of financial accommodation within the meaning of the Bankruptcy Code, 11 U.S.C. § 365, as amended from time to time. Subject to this Section, Member will deposit to the Merchant Account (defined in Section 6 below) all funds evidenced by Sales Drafts (whether evidenced in writing or by electronic means) complying with the terms of this Agreement and the Rules and will provide you provisional credit for such funds (less recoupment of any credit(s), adjustments, or chargebacks). You acknowledge that your obligation to NOVA and Member for all amounts owed under this Agreement arise out of the same transaction as Member's obligation to deposit funds to the Merchant Account
- ii. Provisional Credit. Notwithstanding the previous sentences, under no circumstance will Member or NOVA be responsible for processing credits or adjustments related to Sales Drafts not originally processed by Member and NOVA. All Sales Drafts and deposits are subject to audit and final checking by Member and NOVA, and may be adjusted for inaccuracies. You acknowledge that all credits provided to you are provisional and are subject to chargebacks and adjustments in accordance with the Rules. You further acknowledge that a credit is provisional and subject to adjustment if the credits are the subject of suspected fraud or a breach of this Agreement, whether or not a transaction is charged back by the Card issuer.

B. Chargebacks. You are fully liable to NOVA and Member for all transactions returned to NOVA or Member for whatever reason, otherwise known as "chargebacks". You will pay NOVA and Member on demand the value of all chargebacks. You authorize NOVA and Member to debit the Merchant Account, the Reserve Account, or any other account held at Member or at another financial institution the amount of all chargebacks. You will fully cooperate with NOVA and Member in complying with the Rules regarding chargebacks.

C. Excessive Activity. Your presentation to NOVA of Excessive Activity will be a breach of this Agreement and cause for immediate termination of this Agreement. "Excessive Activity" means, during any monthly period, chargebacks and/or retrieval requests in excess of one percent (1%) of the average monthly dollar amount of your Card transactions. You authorize, upon the occurrence of Excessive Activity, Member and NOVA to take additional actions as either of them may deem necessary, including, but not limited to, suspension of processing privileges or creation or maintenance of a reserve account in accordance with this Agreement.

D. Credits.

- i. Credit Memoranda. You will issue a credit memorandum, instead of making a cash advance, a disbursement or a refund on any Card transaction unless otherwise required by law. Member will debit the Merchant Account for the total face amount of each credit memorandum submitted to NOVA. You will not submit a credit relating to any Sales Draft not originally submitted to NOVA, nor will you submit a credit that exceeds the amount of the original Sales Draft. You will, within the time period specified by applicable law, provide NOVA with a credit memorandum or credit statement for every return of goods or forgiveness of debt for services which were the subject of a Card transaction.

- ii. Revocation of Credit. Member or NOVA may refuse to accept any Sales Draft or revoke its prior acceptance of a Sales Draft in the following circumstances: (a) the transaction giving rise to the Sales Draft was not made in compliance with all terms and conditions of this Agreement, the Laws and the Rules; (b) the Cardholder disputes his liability to Member for any reason, including but not limited to those chargeback rights enumerated in the Rules; or (c) the transaction giving rise to the Sales Draft was not directly between you and the Cardholder. You will pay Member or NOVA, as appropriate, any amount previously credited to you for a Sales Draft not accepted by Member or NOVA.

E. Reprocessing. Notwithstanding any authorization or request from the Cardholder or customer, you will not reenter or reprocess any Card transaction which has been charged back.

F. Factoring. You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. You will not sell or disclose to third parties Card account information other than in the course of performing your obligations under this Agreement.

5. Other Types of Transactions.

A. Mail Order. You may solicit and accept mail orders or telephone orders (“mail/telephone orders”). You will obtain the expiration date of the Card for a mail/telephone order and submit the expiration date when obtaining authorization of the Card transaction. For mail/telephone order transactions, you will type or print legibly on the signature line of the Sales Draft the following applicable words or letters: telephone order or “TO”; or mail order or “MO”.

B. Recurring Transactions. For recurring transactions, you must obtain a written request from the Cardholder for such goods and services to be charged to the Cardholder’s account, the frequency of the recurring charge and the duration of time during which such charges may be made. You will not complete any recurring transaction after receiving: (i) a cancellation notice from the Cardholder, (ii) notice from NOVA or Member, or (iii) a response that the Card is not to be honored. You must print legibly on the Sales Draft the words “Recurring Transaction”.

C. Multiple Sales Drafts. You will include a description and total amount of goods and services purchased in a single sales transaction on a single Sales Draft or transaction record, unless: (i) partial payment is entered on the Sales Draft or transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction, or (ii) a Sales Draft represents an advance deposit in a Card transaction completed in accordance with this Agreement and the Rules.

D. Partial Completion.

- i. Prior Consent. You may accept for payment by Card amounts representing a deposit or partial payment for goods or services to be delivered in the future.
- ii. Acceptance. If you have obtained prior written consent, then you will complete such Card transactions in accordance with the terms set forth in this Agreement,

the Rules, and the Laws. Cardholders must execute one Sales Draft upon making a deposit with a Card and a second Sales Draft upon paying the balance. You will note upon the Sales Draft the words “deposit” or “balance” as appropriate. You will not deposit the Sales Draft labeled “balance” until the goods have been delivered to Cardholder or you have fully performed the services.

E. Future Delivery. You may present Sales Draft or other memorandum to Member or NOVA for processing (whether by electronic means or otherwise) which relates to the sale of goods or services for future delivery.

F. Electronic Commerce Transactions.

- i. Authorization. You may process electronic commerce (“EC”) transactions, only if the transactions have been encrypted by a third party vendor acceptable to NOVA and Member. If you submit EC transactions without NOVA’s consent, NOVA may immediately terminate this Agreement. You understand that transactions processed via EC are high risk and subject to a higher incidence of chargebacks. You are liable for all chargebacks and losses related to EC transactions, whether or not: i) EC transactions have been encrypted; or ii) you have obtained NOVA’s consent to engage in such transactions. Encryption is not a guarantee of payment and will not waive any provision of this Agreement or otherwise validate a fraudulent transaction. All communication costs related to EC transactions will be your responsibility. You understand that NOVA will not manage EC telecommunications link and that it is your responsibility to manage that link. All EC transactions will be settled by Member into a depository institution of the United States in U.S. currency.
- ii. Requirements. For goods to be shipped on EC transactions, you may obtain authorization up to 7 calendar days prior to the shipment date. The authorization is valid if the Sales Draft amount is within 15% of the authorized amount, provided that the additional amount represents shipping costs. Further, your web site must contain all of the following information: (a) complete description of the goods or services offered, (b) returned merchandise and refund policy, (c) customer service contact, including electronic mail address and/or telephone number, (d) transaction currency (such as U.S. or Canadian dollars), (e) export or legal restrictions, if known, and (f) delivery policy. If you store cardholder account numbers, expiration dates, and other personal cardholder data in a database, you must follow MasterCard’s guidelines on securing such data.

6. Merchant Account.

A. Establishment and Authority. You will establish and maintain with Member one or more commercial checking account(s) to facilitate payment for Card transactions (“Merchant Account”). You will maintain sufficient funds in the Merchant Account to accommodate all transactions, including but not limited to chargebacks, contemplated by this Agreement. You

authorize NOVA, NOVA's agent, and Member to debit the Merchant Account for chargebacks in accordance with the Rules, and for any other penalties or payments under this Agreement. This authority will remain in effect for at least 180 days after the termination of this Agreement. Merchant will notify NOVA 48 hours before Merchant changes the Merchant Account.

B. Deposits. Member will deposit all Sales Drafts to the Merchant Account subject to Section 4 of this Agreement. You authorize Member or NOVA to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant you conditional credit for any entry.

C. Asserted Errors. You must promptly examine all statements relating to the Merchant Account, and immediately notify NOVA in writing of any errors. Your written notice must include: (i) Merchant name and account number, (ii) the dollar amount of the asserted error, (iii) a description of the asserted error, and (iv) an explanation of why you believe an error exists and the cause of it, if known. That written notice must be received by us within 30 days after you received the periodic statement containing the asserted error. You may not make any claim against Member or NOVA for any loss or expense relating to any asserted error for 60 days immediately following our receipt of your written notice.

D. ACH Authorization. You authorize Member, NOVA, and NOVA's agent to initiate debit/credit entries to the Merchant Account, in accordance with this Agreement. This authorization will remain in effect after termination of this Agreement for at least 180 days after the termination of this Agreement. In the event you change the Merchant Account, the terms of this Agreement shall apply.

7. Recoupment and Set-Off.

A. Recoupment and Set Off. Member and NOVA have the right of recoupment and set-off. This means that they may offset any outstanding/uncollected amounts owed to them from: (i) any amounts they would otherwise be obligated to deposit into the Merchant Account, and (ii) any other amounts NOVA or Member may owe you under this Agreement or any other agreement.

B. Remedies Cumulative. The rights conferred upon Member and NOVA in this Section are not intended to be exclusive of each other or of any other rights and remedies of Member and NOVA under this Agreement, at law or in equity. Rather, each and every right of Member and NOVA at law or in equity will be cumulative and concurrent and in addition to every other right.

8. Fees and Other Amounts Owed.

A. Fees. You will pay Member and NOVA fees for services, forms or equipment as set forth in NOVA's response to your request for proposal. Such fees will be calculated once each month for the previous month's activity. NOVA will send you a monthly account statement reflecting such amount, which will be paid within 45 days in accordance with § 11-62.10 of the Virginia Code. In addition, during the term of this Agreement and following termination of this Agreement, you will pay NOVA or Member, within 45 days in accordance with § 11-62.10 of the Virginia Code, any amount incurred by NOVA or Member attributable to this Agreement, including but not

limited to chargebacks, fines imposed by Visa or MasterCard, non-sufficient fund fees, and ACH debits that overdraw the Merchant Account, Reserve Account, or any other account you have at Member.

B. Fee Amendments. The fees set forth in your request for proposal will not be amended by NOVA for the Initial Term of the Agreement except to pass through to you increases in interchange, assessments, or fees imposed by a third party.

9. Information, Indemnification.

A. Information. You must notify NOVA in writing of any changes to the information in the request for proposal, including but not limited to: any additional location or new business, type of goods and services provided, and how sales are completed (i.e., by telephone, mail, or in person at your place of business). The notice must be received by NOVA within 20 business days of the change. You will provide updated information to NOVA within a reasonable time upon request. You are liable to Member and NOVA for all losses and expenses incurred by Member or NOVA arising out of your failure to report changes to us.

B. Responsibility. Among Merchant, NOVA and Member, Merchant will be responsible for, and will at its own expense, defend itself against any and all suits, claims, losses, demands or damages, arising out of or in connection with any dispute between Merchant and any Cardholder relating to any Card transaction or any breach by Merchant of any of its obligations under this Agreement.

C. Performance. NOVA and Member will perform all services in accordance with this Agreement. NOVA makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **NOVA disclaims all implied warranties, including those of merchantability and fitness for a particular purpose.** No party will be liable to the other parties for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.

10. Representations and Warranties. You represent and warrant to NOVA and Member at the time of execution and during this term of this Agreement that: A) you have never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File; B) all transactions are bona fide, and no transaction involves the use of a Card for any purpose other than the purchase of goods or services from you; and C) you will comply with the Laws and Rules.

11. Audit and Financial Information. Merchant authorizes Member and NOVA, at Visa and/or MasterCard's direction, to audit Merchant's records to confirm compliance with this Agreement; provided, however, Member and NOVA agree to keep these records confidential if Merchant is required by law to keep such records confidential. Disclosure of such records to Visa and/or MasterCard will not be considered a violation of this prohibition. Merchant will provide Member and NOVA financial statements and other financial information as requested from time to time.

12. Third Parties.

A. Services. You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You are responsible for ensuring compliance with the requirements of any third party in using their products. This includes making sure you have and comply with any software updates. NOVA has no responsibility for any transaction until that point in time NOVA receives data about the transaction.

B. Use of Terminals Provided by Others. You will notify NOVA immediately if you decide to use electronic authorization or data capture terminals or software provided by any entity other than NOVA or its authorized designee ("third party terminals") to process transactions. If you elect to use third party terminals, you agree (i) the third party providing the terminals will be your agent in the delivery of Card transactions to Member via Visa Net or a similar data processing system or network; and (ii) to assume full responsibility and liability for any failure of that third party to comply with the Rules or this Agreement. Neither Member nor NOVA will be responsible for any losses or additional fees incurred by you as a result of any error by a third party agent or a malfunction in a third party terminal.

13. Term and Termination.

A. Term. The Agreement will become effective on the date Member executes this Agreement ("Effective Date"). The Agreement will remain in effect for a period of five (5) years ("Initial Term") and will renew for three successive one (1) year terms ("Renewal Term") unless terminated as set forth below.

B. Termination.

- i. Without Cause. The Agreement may be terminated by any party to be effective at the end of the then current term by giving written notice of an intention not to renew at least 90 days before the end of the current term.
- ii. With Cause. The appropriate party may terminate this Agreement immediately upon the occurrence of an Event of Default, defined below. Notice of termination may be given orally or in writing, but if given orally will be confirmed in writing. Termination will be effective on the date specified by the notice.
- iii. Generally. Each party's rights of termination provided throughout this Agreement are cumulative. A specific right of termination enumerated in this Agreement will not limit any other right of any party to terminate this Agreement expressed elsewhere in this Agreement.

C. Events of Default. The following will constitute an Event of Default

- i. Excessive Event. The occurrence of Excessive Activity.
- ii. Mail or Telephone Orders. Accepting mail or telephone orders or electronic commerce transactions without NOVA's prior written consent.
- iii. Nonpayment. You do not pay NOVA or Member any amount you owe NOVA or Member. NOVA or Member do not pay you any amount they owe to you subject to the provisions of Section 6(C).
- iv. Adverse Financial Condition. Any party's financial condition changes adversely.

- v. Garnishment. Your deposit accounts with Member, the Merchant Account, or any of your property in the possession of NOVA or Member is garnished or attached.
- vi. Asset Assignment. Any party assigns its assets generally for the benefit of creditors.
- vii. Bankruptcy. A party is insolvent as evidenced by its or the other party's records, or a proceeding is commenced by or against such party under any bankruptcy, insolvency or similar law seeking an order to adjudicate such party bankrupt or insolvent or other relief with respect to such party or such party's debts, or seek appointment of a receiver or similar official for such party or for any substantial part of such party's assets.
- viii. Breach. A party fails to perform a material obligation of this Agreement, and such failure continues for a period of 30 days after the breaching party receives notice of the breach.
- ix. False Representation. Any representation and warranty by a party is or becomes false or misleading in any material respect as of the date made, or becomes false or misleading at any time during the term of this Agreement.
- x. Third Party Action. Visa or MasterCard requires Member or NOVA to terminate this Agreement or cease processing transactions.

D. Action upon an Event of Default. Upon the occurrence of an Event of Default, NOVA may take the following action:

- i. suspend processing privileges and terminate this Agreement,
- ii. create a Reserve Account, or
- iii. any other reasonable action deemed necessary by NOVA or Member to protect their interests.

E. Action upon Termination.

- i. Terminated Merchant File. You acknowledge that Member and/or NOVA is required to report your business name to Visa and MasterCard when Merchant is terminated due to the reasons listed in the Rules.
- ii. Merchant Account. Each party's obligations regarding accepted Sales Drafts will survive termination. You must maintain in the Merchant Account and the Reserve Account enough funds to cover all chargebacks, deposit charges, refunds and fees incurred by you for a reasonable time. You authorize Member to charge those accounts, or any other account maintained under this Agreement, for all such amounts. If the amount in the Merchant Account and Reserve Account is not adequate, you will pay Member and NOVA the amount you owe them upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.
- iii. Equipment. Within 14 business days of the date of termination, you must return all equipment owned by NOVA and immediately pay NOVA any amounts you owe it for equipment costs.

14. Compliance With Laws And Rules. You agree to comply with all rules and operating regulations issued from time to time by MasterCard and Visa and any policies and procedures provided by

Member or NOVA, including those set forth in the Merchant Operating Guide (“Rules”) provided such Rules are not contrary to Virginia law. The Rules are incorporated into this Agreement by reference as if they were fully set forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations (“Laws”), as amended from time to time affecting acceptance of the cards, processing of card transactions, and the transactions contemplated by this Agreement.

15. Use of Trademarks and Confidentiality.

A. Use of Trademarks. Your use of Visa and MasterCard marks will fully comply with the Rules. Your use of Visa, MasterCard or other cards’ promotional materials will not indicate, directly or indirectly, that Visa or MasterCard endorse any goods or services other than their own and you may not refer to Visa or MasterCard in stating eligibility for your products or services.

B. Confidentiality.

- i. Cardholder Information. You will not disclose to any third party Cardholders’ account information or other personal information except to an agent of yours assisting in completing a card transaction, or as permitted by law. You must keep all systems and media containing account, Cardholder or transaction information (physical or electronic, including but not limited to account numbers, card imprints, and TIDs) in a secure manner, to prevent access by or disclosure to anyone other than your authorized personnel. You must destroy in a manner that will render the data unreadable all such media that you no longer deem necessary or appropriate to store (except for Sales Drafts maintained in accordance with this Agreement, Laws, and the Rules). Further, you must take all steps reasonably necessary to ensure Cardholder information is not disclosed or otherwise misused.
- ii. Prohibitions. You will not use for your own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data belonging to or relating to the business of NOVA (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that you use to protect your own confidential information.

C. Return to NOVA. All promotional materials, advertising displays, emblems, Sales Drafts, credit memoranda and other forms supplied to you and not purchased by you or consumed in use will remain the property of NOVA and will be immediately returned to NOVA upon termination of this Agreement.

16. General Provisions.

A. Exclusivity. During the Initial and any Renewal Term of this Agreement, you will not enter into a new agreement with any other entity that provides credit card or debit card processing services similar to those provided by NOVA and Member as contemplated by this Agreement.

B. Assignability. This Agreement may be assigned by Member or NOVA, but may not be assigned by Merchant directly or by operation of law, without the prior written consent of Member and NOVA. If you nevertheless assign this Agreement without NOVA’s consent, the Agreement will be binding on the assignee.

C. Notices. Any written notice under this Agreement will be deemed given upon the earlier of: (i) actual receipt or (ii) five days after being deposited in the United States mail, and addressed to the last address shown on the records of the sender.

D. Bankruptcy. You will immediately notify Member and NOVA of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against Merchant or any of its principals. You will include Member and NOVA on the list of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing, and failure to do so will be cause for immediate termination or any other action available to NOVA under applicable Rules or Law. You acknowledge that this Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

E. Governing Law. This Agreement will be governed by the laws of the State of Virginia.

F. Customer Contact. You authorize Member and NOVA to contact your customers if they determine that such contact is necessary to find out information about any Card transaction between you and the customer.

G. Amendments. Member and NOVA may propose amendments or additions to this Agreement. Member or NOVA will inform you of a proposed change in a periodic statement or other written notice. You will be deemed to have agreed to the change if you continue to present transactions to Member and NOVA after 30 days following the mailing of the notice. Notwithstanding the previous sentence, changes to fees authorized by this Agreement will be effective upon notice to you, unless a later effective date is provided. Further, NOVA is entitled to pass through to you any fee increases imposed by Visa, MasterCard, or telecommunication vendors without giving you the right to terminate this Agreement.

H. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by any party to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by all parties.

I. Independent Contractors. NOVA, Member and Merchant will be deemed independent contractors and none will be considered agent, joint venturer or partner of the other.

J. Survival. All provisions that by their context are intended to survive termination of this Agreement will so survive.

Merchant:
The Commonwealth of Virginia
Department of the Treasury

First Union National Bank

Contract #CMI 01-010 – Merchant Card Financial Processing Services
Attachment B – Government Merchant Processing Agreement

By: _____

By: _____

Name: Mary G. Morris

Name: _____

Title: Treasurer of Virginia

Title: _____

Date: _____

Date: _____

NOVA Information Systems, Inc.

By: _____

Name: _____

Title: _____

Date: _____